

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3654 of 1999

to

FIRST APPEAL No 3662 of 1999

with

Civil Applications Nos. 7108 to 7116 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

THAKARSIBHAI DEVJIBHAI

Appearance:

Mr.P.G. Desai, GP, for the appellant in F.A. Nos.3654 of 1999 to 3659 of 1999

Mr. R.C. Kodekar, AGP, for the appellant in F.A. nos.3660 of 1999 to 3662 of 1999

MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

Date of decision: 05/11/1999

COMMON ORAL JUDGMENT: (Per: Kadri, J.)

1. Admitted. Mr. A.J. Patel, learned counsel, waives service of notice on behalf of respondents in each appeal. At the request of learned counsel appearing for the parties, all these appeals are taken up for final hearing today.

2. All these appeals, which are filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated October 14, 1998, rendered by the Special Judge, Narmada Yojana (L.A.Q.), Ahmedabad (Rural), at Mirzapur, Ahmedabad, in Land Reference Cases Nos. 1839 of 1996 to 1847 of 1996. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

3. The Executive Engineer of Narmada Project, Saurashtra Branch Canal, Division 1/3, Kadi, had proposed to the State Government to acquire agricultural lands of village Viramgam, Taluka: Viramgam, District Ahmedabad, for public purpose of construction of Narmada Project Saurashtra Branch Canal of Sardar Sarovar Narmada Corporation Limited. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Viramgam were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued which was published in the Government Gazette on August 1, 1991. After following usual procedure under Section 5-A of the Act, the Special Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Viramgam which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Narmada Project Saurashtra Branch Canal. Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on December 19, 1991. Interested persons were, thereafter, served with notices under Section 9(3)(4) of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.60 per sq.mtr., but, having regard to the materials

placed before him, the Special Land Acquisition Officer, by his award dated December 15, 1993, offered compensation to the claimants at the rate of Rs.4.50 ps per sq.mtr. for the acquired lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the matters to the Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Ahmedabad (Rural), at Mirzapur, Ahmedabad, which were numbered as Land Reference Cases Nos. 1839 of 1996 to 1847 of 1996. In the reference applications, it was pleaded by the claimants that their agricultural lands which were acquired were situated near Viramgam town where all the facilities such as electricity, water supply, schools, banks, post-office, etc. were available. The claimants also pleaded in the reference applications that, in Viramgam town, office of Gujarat Electricity Board, IOC Project, godown of Food Corporation of India and other factories were situated, and, having regard to over all development which had taken place near the acquired lands, they were entitled to compensation at the rate of Rs.60.00 per sq.mtr. The reference applications were contested by the acquiring authorities by written statement Exh.12 contending, inter alia, that the applications filed by the claimants were false, frivolous, baseless and without any legal substance. It was contended that the claimants had already received full and final payment of the amount of award and, therefore, the claimants were estopped from claiming enhanced compensation. It was further contended that determination of compensation by the Special Land Acquisition Officer was just as well as proper and, therefore, reference applications should be dismissed. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference Court at Exh.13. In order to substantiate the claim advanced in the reference applications, Devjibhai Mohanbhai, who was claimant of Land Acquisition Case No.1839 of 1996, was examined at Exh.17. During oral deposition before the Court, the claimant produced earlier award of the Reference Court at Exh.16, rendered by the learned 2nd Extra Assistant Judge, Ahmedabad (Rural), at Mirzapur, Ahmedabad, in Land Acquisition Case No.398 of 1993 and allied matters. The acquired lands of award Exh.16 came to be acquired for staff quarters of Indian Oil Corporation of Viramgam by notification issued under Section 4(1) of the Act on January 3, 1991. By award Exh.16, the Reference Court had determined market value of the acquired lands of village Viramgam as on January

3, 1991 at Rs.64 per sq.mtr. The claimants also produced certified copy of 7/12 extracts. The appellants did not lead any oral evidence. However, they produced documentary evidence in form of copy of village forms No.7/12 at Exh.24, 37, 39, Anavari yadi at Exh.39, sale No.7/12 at Exh.24 to 37, Anavari yadi at Exh.39, sale of village Viramgam, and at Exh.42 the plans showing the sales which had taken place in the town of Viramgam. The appellants also produced certified copy of award Exh.46 rendered by the learned Assistant Judge, Ahmedabad (Rural), Mirzapur, in Land Acquisition Case No.543 of 1988, in respect of the acquired lands of village Viramgam. The acquired lands of village Viramgam, which were subject matter of award Exh.46, came to be acquired on May 13, 1987 for the public purpose of Viramgam-Kutch-Bhuj Diversion Road. The Reference Court had determined market value of the acquired lands by resorting to 'yield basis' at the rate of Rs.16 per sq.mtr as on May 13, 1987.

4. The Reference Court, on over all appreciation of oral as well as documentary evidence produced by the parties, deduced that award Exh.16 produced by the claimants, in all respects, was relevant for the purpose of determination of market value of the present acquired lands. The Reference Court observed that, in earlier award Exh.16, notification under Section 4 of the Act was published on January 3, 1991 whereas in the present case the lands came to be acquired by notification issued under Section 4(1) of the Act on August 1, 1991. However, the Reference Court observed that, looking to the maps produced by the opponent at Exh.41 and 42, and deposition of claimant at Exh.17, it becomes evident that the present acquired lands were situated far away from the lands acquired under award Exh.16. In view of the above finding of the Reference Court, the market price of the present acquired lands is determined at Rs.58 per sq.mtr. by the impugned common award giving rise to these appeals.

5. Mr. P.G. Desai, learned Government Pleader, assisted by Mr.R.C.Kodekar, submitted that no cogent evidence was led by the claimants to arrive at the conclusion that the market value of the acquired lands on the relevant date was Rs.68 per sq.mtr. It is submitted by the learned Government Counsel that the previous award Exh.16 was only a corroborative evidence and the Reference Court had erred in placing reliance on the said award for determination of the market value of the acquired lands. It is pleaded by the learned counsel for

the appellants that award Exh.16 was in no way comparable or relevant for the purpose of determination of the market value of the acquired lands because the acquired lands under award Exh.16 were situated near town Viramgam whereas the acquired lands in the present case were situated at distance of 5-6 kms. towards eastern side of town Viramgam. It is further contended by the learned counsel for the appellants that under award Exh.16, only 2 Hectares of agricultural lands were acquired whereas under the present acquisition nearly 20 Hectares of agricultural lands were acquired. It is further submitted by the learned counsel for the appellants that award Exh.16 is neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of the lands acquired in the present case. It is further submitted by the learned counsel for the appellants that award Exh.46 was produced by the appellants, but the Reference Court had ignored it without making a note of it in the judgment. It is further submitted by the learned counsel for the appellants that by award Exh.46, the agricultural lands of same village Viramgam came to be acquired on May 13, 1987 for public purpose of Viramgam-Kutch-Bhuj Diversion road. The Reference Court had determined market value of the acquired lands under Exh.46 as on May 13, 1987 at Rs.16 per sq.mtr. It is further submitted by the learned counsel for the appellants that, if award Exh.46 was taken into consideration, then, the market value determined by the Reference Court in respect of the acquired lands was highly excessive and, therefore, the appeals deserve to be allowed.

6. Mr. A.J. Patel, learned counsel for the claimants, has strenuously urged that the claimant's witness Devjibhai Mohanbhai, Exh.17, had described situation and fertility of the acquired lands. It is submitted by learned counsel for the respondents-claimants that town Viramgam was the head-quarter of taluka and was connected by road (national as well as state highways) with Ahmedabad, Surendranagar, Dhangadhra, Radhanpur and Mehsana. It is claimed that Viramgam was also connected by rail with other parts of the Gujarat State. It is submitted by learned counsel for the respondents-claimants that town Viramgam was having all the facilities of electricity, water supply, telephone, post-office, educational institutions, and Viramgam town was having under-ground drainage system. It is submitted by learned counsel for the respondents-claimants that in the town Viramgam there was offices of Mamlatdar, Taluka Panchayat, Civil Court, and Gujarat Electricity Board. It is also claimed that

town Viramgam was also having industrial units such as textile mills and factories situated at GIDC. It is submitted by learned counsel for the respondents-claimants that broad-guage railway-line passes near the acquired lands and staff quarters of Indian Oil Corporation was situated at a distance of two fields away from the acquired lands. It is further submitted by learned counsel for the respondents-claimants that the Indian Oil Corporation had acquired, for construction of staff quarters, lands of town Viramgam in the month of January 1991 for which the Reference Court had determined market value at Rs.64 per sq.mtr. It is submitted by learned counsel for the respondents-claimants that the lands which were acquired for staff-quarters of Indian Oil Corporation were the subject matter of award Exh.16, which had become final, as it was not challenged either by the acquiring body or the State Government in the higher forum. It is pleaded that the acquired lands of award Exh.16 in all respect were comparable with the present acquired lands and, therefore, the Reference Court had not committed any error in placing reliance on award Exh.16 for the purpose of determination of market value of the acquired lands in the present case. The learned counsel for the respondents further stressed that award Exh.46 was produced by the appellants at the fag end of the hearing of the reference applications without adducing any evidence to establish that the said award was relevant and comparable for the purpose determination of market value of the acquired lands. It is submitted by the learned counsel for the respondents that the Reference Court, while rendering award Exh.46t, had resorted to yield method because before the Reference Court the claimants of the acquired lands of award Exh.46 had not led any relevant evidence to determine the market value of the acquired lands of award Exh.46. It is submitted that in the present case the claimants had produced reliable evidence in form of earlier award which was most comparable and relevant for the purpose of determination of market value of the acquired lands and, therefore, the Reference Court had not committed any error in placing reliance on award Exh.16 by discarding award Exh.46 which was not proved to be comparable or relevant by the appellants in the eye of law. It is further contended by the learned counsel for the appellants that the respondents had produced sufficient materials before the Reference Court justifying their claim of Rs.60 per sq.mtr. What was asserted was that a just award has been passed by the Reference Court determining market value of the lands acquired and, as no ground is made out to interfere with the same, the appeals should be dismissed.

7. We have heard learned counsel for the parties at length. We have also taken into consideration relevant documents as well as oral evidence produced by learned counsel for the parties for our perusal before deciding this group of appeals. The learned counsel for the parties have also produced maps as additional evidence under Section Order 41 Rule 27 of the Code of Civil Procedure in these appeals which were ordered to be taken on record.

8. Before the Reference Court, claimants' witness, Devjibhai Mohanbhai, Exh.17, had deposed that they were raising two crops in a year on the acquired lands. He has stated that they used to raise crops of cotton, millet, bajra, jeera and wheat, and were getting net income of Rs.10,000/- per bigha per year. However, the witness could not produce documentary evidence of support to his oral evidence about yield and income derived from the sale of agricultural produces. The Supreme Court in Special Land Acquisition Officer vs. P. Veerabhadarappa, AIR 1984 Supreme Court 774, held as under:

"The function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1) and the methods of valuation may be: (1) Opinion of experts: (2) The prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired, or of the lands adjacent to those acquired and possessing similar advantages; and (3) A number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available."

In view of the pronouncement of the Supreme Court in the case of Special Land Acquisition Officer vs. P. Veerabhadarappa (supra), yield method can be resorted to only when there is no other evidence in form of sale transaction or opinion of experts is available. In the present case, the claimants had adduced sufficient evidence describing nature and situation of the acquired lands and had described similar features in comparison with the acquired lands of award Exh.16. In Pal Singh and others vs. Union Territory of Chandigarh, AIR 1993 Supreme Court 225, the Supreme Court held that for a judgment relating to value of land to be admitted in

evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land. As observed earlier, it was neither brought to the notice of the Reference Court nor it is brought to the notice of this Court that the previous award Exh.16 of the Reference Court was in any manner modified by the appellate court. Therefore, in our opinion, award Exh.16 had become final between the parties. The respondents had led sufficient evidence to show that the acquired lands of award Exh.16 and the acquired lands in the present case were in all respects similar lands. It was never brought to the notice of the Court that the lands acquired in the present case have certain disadvantages in comparison to the agricultural lands of award Exh.16 which were previously acquired. Under the circumstances, we are of the opinion that the Reference Court was justified in placing reliance on the previous award Exh.16 of the Reference Court rendered in respect of agricultural lands of same village Viramgam for the purpose of determining market value of the lands acquired in the present case. It is well settled that an award rendered by the Reference Court in respect of similar lands situated nearby the acquired lands and which has become final can be taken into consideration for the purpose of determining market value of the lands acquired subsequently either from same village or nearby village.

9. The Supreme Court in Kanwar Singh and others vs. Union of India, JT 1998 (7) SC 397, while deciding the question whether previous award of one village can be relied on for determination of market value of adjoining or other village, ruled that, "Generally there would be different situation and potentiality of the land situated in two different villages unless it is proved that the situation and potentiality of the land in two different villages are the same. Whether such an offer of compensation represent the market value of the land on the date of notification under Section 4 of the Act, has to be determined on the basis of evidence produced before the Court. The claimants have to prove and demonstrate that the compensation offered by the Collector is not adequate and the same does not reflect the true market value of the land on the date of notification under Section 4 of the Act". In our opinion, the claimants'

witness, Devjibhai Mohanbhai Exh.17, had adduced sufficient material on record during his oral evidence that the acquired lands of award Exh.16 in all respects were similar in nature to the present acquired lands. The lands of award Exh.16 came to be acquired in the month of January 1991 whereas the present acquired agricultural lands came to be acquired after seven months, i.e. in August 1991. Thus, there was a gap of nearly seven months between issuance of two notifications, by which, the lands under award Exh.16 and the present acquired lands came to be acquired.

10. In *State of Gujarat vs. Gobar Rupa*, 1995 (1) GLR 1, the Division Bench of this Court ruled that the price fetched under a genuine sale-deed could form the basis for determining the market value of an acquired land and market value determined by an award made under the Act, for an earlier acquired land, either by the Land Acquisition Officer or the Court could also form the basis for determining the market value of subsequently acquired land.

11. There are several recognized modes for basing the award for arriving at a fair and just amount of compensation. The main anxiety of the authority or court should be to ascertain and find out the fair and just amount of value of the land under acquisition. The mandate of S.23 of the Act is to see that the affected person in an acquisition proceeding is placed in the same position, as far as possible, as he would have been, had there been no acquisition. So, the ultimate purpose and policy enshrined in S.23 of the Act is to see that the affected person or owner of the property acquired, should get fair and just amount of compensation. Keeping in mind these salient principles propounded in a catena of decisions, in our opinion, the Reference Court had committed no error in placing reliance on the earlier award Exh.16, which was in respect of the acquired lands of same village, Viramgam, for the purpose of ascertaining market value of the lands acquired in the present case from same village.

12. Again, in *Ranjit Singh and others vs. Union Territory of Chandigarh*, AIR 1993 Supreme Court 227, the Supreme Court ruled that, when market value was determined by the High Court in respect of lands acquired under subsequent notification after the period of one year acquiring similar lands, a higher market value of land should be given to those acquired under subsequent notification keeping in view general increase in price of land during that period.

13. It is significant to note that, while determining market value of the acquired lands under award Exh.16, the Reference Court had placed reliance on the earlier awards of the Court with respect to the acquired lands of same village which came to be confirmed by the High Court in appeals. The award Exh.16 reflects that lands bearing Survey Nos. 480/2 and 480/6 of village Viramgam were placed under acquisition wherein determination of market value was confirmed by the High Court at Rs.32 per sq.mtr which was pursuant to publication of Section 4 notification on October 4, 1980. We have also noticed that, in award Exh.16, for acquisition of the lands of same village on 1.4.1982, the Reference Court had determined market value of the lands of the same village at Rs.37 per sq.mtr. The said determination of market value of the lands under acquisition was challenged in the High Court which came to be confirmed by the High Court. The lands under award Exh.16 came to be acquired by Section 4(1) notification on January 3, 1991. The Reference Court, taking into consideration rise in price for 9 years (from 1982 to 1991) because of time-lag between issuance of notifications of earlier acquisition of lands which were acquired in the year 1982 and the lands which were acquired under award Exh.16, had determined market value of the acquired lands at Rs.64 per sq.mtr minus Rs.18/per sq.mtr awarded by the Special Land Acquisition Officer. Thus, it becomes evident that there was heavy pressure on the lands of town Viramgam because of different acquisitions which had taken place from the year 1980 to August 1991. The determination of market value by the previous awards also reflects that there was rise in price of lands of town Viramgam.

14. Now, we propose to consider the relevancy of award Exh.46 which was sought to be relied upon by the appellants for the purpose of determining market value of the lands acquired in the present case. The award Exh.46 was in respect of lands of same town Viramgam. The acquired lands which were subject matter of award Exh.46 were acquired by publication of Section 4(1) notification on May 13, 1987, for the public purpose of Viramgam-Kutch-Bhuj-Diversion Road. The Special Land Acquisition Officer had fixed market price of said acquired lands at Rs.8 per sq.mtr. The claimants of those acquired lands had preferred references under Section 18 of the Act before the District Court, Ahmedabad (Rural). The claimants of those references did not lead reliable evidence in form of sale transaction, evidence of experts or previous awards and, therefore, there was no alternative left to the Reference Court but

to resort to yield method. While resorting to yield method, the Reference Court had determined market value of the acquired lands as on May 13, 1987 at Rs.16 per sq.mtr. It may be noted that, as per the decision of the Supreme Court in Kanwar Singh [JT 1998 (7) SC 397] (supra), the appellants had not led any evidence to establish as to how the acquired lands of award Exh.46 were similar in comparison to the lands acquired in the present case. The appellants had merely produced certified copy of previous award Exh.46 without adducing evidence to establish as to how award the acquired lands of award Exh.46 were similar in comparison to the lands acquired in the present case. We see no error committed by the Reference Court in not placing reliance on earlier award Exh.46, which, in our opinion, was not proved before the Reference Court. We can take example of copy of index or certified copy of sale deed produced under Section 51-A of the Act without examining vendor or vendee or scribe and visualise what would be the effect of those sale transactions or sale index which was not proved in the eye of law. The Supreme Court in Special Deputy Collector vs. Kurra Sambasiva Rao, AIR 1997 Supreme Court 2625, has ruled that unless such sale transaction or sale index are proved by examining witnesses, i.e. vendor or vendee or scribe, no reliance can be placed on those documents for determination of market value of the acquired lands. The principle enunciated by the Supreme Court in Kurra Sambasiva Rao's case (supra) will also apply to the earlier awards on which reliance is placed to determine the market value of the acquired lands. Unless evidence is led to show the similarity between acquired lands in appeal to acquired lands of earlier awards, the earlier awards cannot be blindly followed. In absence of any evidence adduced by the claimants, earlier award Exh.46, in which the market price of the acquired land was determined on the basis of yeild method, cannot be blindly followed to determine the market value of the acquired lands of the present appeals. In absence of evidence justifying that the lands of award Exh.46 were in all respects similar and the same crops were raised and income out of the sale of agricultural produces was also similar, compared with the present acquired lands, in our opinion, the Reference court was justified in discarding earlier award Exh.46. Therefore, we do not find any merit in the submission made by the learned Government Counsel for the appellants that the Reference Court erred in not placing reliance on award Exh.46 for the purpose of determining market value of acquired lands in the present case.

15. Similarly, the submission of the learned

Government Counsel for the appellants that the respondents had not led sufficient evidence for enhancement of compensation before the Reference Court, deserves to be rejected. As noted earlier, the claimants had led sufficient evidence to justify their claim of Rs.60 per sq.mtr. It is settled legal principle that earlier awards also can be relied upon and they furnish good guide for the purpose of determination of market price of the lands acquired subsequently. The respondents had led sufficient evidence to establish that the acquired lands of award Exh.16 were in all respects comparable with the present acquired lands. There was sufficient evidence before the Reference Court to determine a just and reasonable compensation to the respondents for their acquired lands. The learned Government Counsel has also faintly submitted that, in absence of any evidence adduced by the respondents, the matters may be remanded back to the Reference Court for determination of market value of the acquired lands and the parties can lead evidence afresh. In our opinion, the submission of the learned Government Counsel does not deserve merit and is hereby rejected. The Supreme Court in K. Krishna Reddy vs. The Special Deputy Collector, Unit II, LMD, Karimnagar, AIR 1988 Supreme Court 2123, laid down principle that the appellate court should not ordinarily exercise power of remand lightly, and, unless the evidence is totally lacking, the order of remand should not be passed. In our opinion, this is not a case of lacking of total evidence before the Reference Court and we are of the opinion that no useful purpose will be served by remitting the matters to the Reference Court at all. As indicated in the foregoing paragraphs, the respondents had led sufficient evidence to determine a fair and just compensation to the respondents for their acquired lands. It is further held by the Supreme Court in K. Krishna Reddy (supra) as under:

"Remand means another round of litigation. There would be further delay in getting the compensation. After all money is what one buys. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charm and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be

determined without loss of time."

In the case of Ashwinkumar K. Patel vs. Upendra J. Patel and others, (1999) 3 Supreme Court Cases 161, the Supreme Court ruled that when there is sufficient evidence before the Court, generally, no remand should be ordered under Order 41 Rule 23 of the Code of Civil Procedure. In the present case, the respondents had led sufficient evidence to prove their case of enhanced compensation by leading oral as well as documentary evidence and, therefore, we have not acceded to the request of learned Government Counsel for the appellants to remand the matters back to the Reference Court.

16. Before the Reference Court, maps Exh.41 and Exh.42 were produced by the appellants. In spite of this fact, the learned Government Counsel submitted an application under Order 41 Rule 27 of the Code of Civil Procedure to produce map showing situation of the acquired lands and town Viramgam. As against the application filed by the appellants to produce map of town Viramgam, Mr. A.J. Patel, learned counsel for the respondents, also, by way of purshis, produced map indicating development which had taken place around the period of issuance of notification under Section 4(1) of the Act in the present case. By consent of the learned counsel for both the parties, the maps produced by them were ordered to be taken on record. The map produced by the appellants indicates that the acquired lands were situated at a distance of 5 kms. from village site of Viramgam. The map produced by the respondents indicates that in government waste land, Kendriya Vidyalaya was established around 1988 and one building of Red Cross Society was also constructed on the government waste land. The map produced by the respondents indicates that there was some development in the surrounding areas of the acquired lands. It also requires to be stated that, just near the acquired lands, broad-guage railway line passes through. The highway is also situated just near the acquired lands. The acquired lands are situated towards eastern side of village Viramgam. On the western side of the acquired lands, IOC Complex was situated. From the map, it is evident that more development has taken place on the western side of the acquired lands rather than on the eastern side. The IOC staff-quarters were situated at a distance of 5 kms from the village site of Viramgam. As indicated earlier, the area, which was acquired for IOC staff-quarters, was 2 Hectares, whereas, the area of the present acquired lands is 20 Hectares. It is set principle of evaluation of land that, when the transaction covering small area of land is taken as basis to evaluate large tract of area, some

deduction has to be made to evaluate the land covering large tract. Therefore, if award Exh.16 is to be taken as basis for the purpose of determination of the market value of the acquired lands in the present case, some deduction will have to be made. At the same time, because of distance between the village site and the acquired lands, which was more than the distance between the village site and acquired lands of award Exh.16, some deduction shall also have to be made. In our opinion, if the deduction of large area and small area coupled with further deduction for distance is made in the present case, then it would be reasonable to deduct 25% from the market price arrived at in respect of the acquired lands of award Exh.16. If 25% deduction is made, then the market price of the acquired lands in the present case would be Rs.48/- per sq.mtr. (Rs.64 less 25% i.e Rs.16=Rs.48.00). In our view, taking into consideration totality of circumstances as prevailing in and around the village site of Viramgam, and the distance between the village site and the acquired lands, the determination of market rate at Rs.48/- per sq.mtrs in respect of acquired lands in the present case would be just and reasonable. We may clarify that even though there was gap of seven months between the issuance of notifications of acquired lands of Exh.16 and the present acquired lands, we did not give any rise in price for the acquired lands. In view of the above discussion, we hold that the claimants-respondents in the present case would be entitled to compensation at the rate of Rs.48/- per sq.mtr.

17. For the foregoing reasons, the appeals partly succeed. It is held that the claimants shall be entitled to compensation at the rate of Rs.48/- per sq.mtr, instead of Rs.58/- per sq.mtr. as held by the Reference Court, and the common judgment and award dated October 14, 1998, rendered by the Special Judge, Narmada Yojana (L.A.Q.), Ahmedabad (Rural), at Mirzapur, Ahmedabad, in Land Reference Cases Nos. 1839 of 1996 to 1847 of 1996, is modified accordingly. Rest of the directions given by the Reference Court regarding addition of 12% on the amount of compensation under Section 23(1-A) of the Act, payment on solatium and interest are not disturbed and are hereby upheld. There shall be no order as to costs. The office is directed to draw decree in terms of this judgment.

18. Civil Applications Nos.7108 to 7116 of 1999 filed by the appellant for stay would not survive and are disposed of accordingly, with no order as to costs.

19. At this stage, the learned counsel for the respondents submitted that the respondents-claimants have not been paid additional compensation awarded by the Reference Court, even though they have lost the possession of their agricultural lands in the year 1991. We, therefore, direct that the appellants shall deposit additional amount of compensation as awarded by this judgment within four months from today.

(swamy)